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CERTIFICATE OF MAILING AND TRANSMISSION VIA FACSIMILE PURSUANT TO 37 C.F.R. §§1.6(d) and 1.8

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Date: 3/19/04

By: John D.

Signature of Person Transmitting Facsimile and Depositing First Class Mail

**IN THE UNITED STATES PATENT
AND TRADEMARK OFFICE**

UTILITY PATENT

Applicant(s):	Marks	Atty. Docket No.:	36207.0100
Serial No.:	09/698,640	Examiner:	Fults, Richard C.
Filed:	October 27, 2000	Group Art Unit:	3628
Title:	METHODS AND APPARATUS FOR ONLINE AUCTIONS AND MARKET-PLACES UTILIZING PROGRAM TERMS		
	Confirmation No.: 4914		

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GROUP 3600

Mail Stop Non-Fee Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Attached herewith is a Response to Office Action mailed December 19, 2003 in the captioned matter.

I. Attached:

- Response to Office Action
- Acknowledgment Postcard

II. Small Entity Status

- Small entity status under 37 C.F.R. §§1.9 and 1.27 is claimed.

FEE CALCULATION, CLAIMS AS AMENDED

	Claims remaining after amendment	Highest number previously paid for	Present Extra	
Total Effective Claims	4	-	20 = 0	x \$ 18.00 = 0.00
Independent Claims	1	-	3 = 0	x \$ 86.00 = \$0.00
If amendment enters proper multiple dependent claim(s) into this application for first time (per application)			\$280.00 +	N/A
			Subtotal:	0.00

**Fee Calculation: Request for Extension of Time
pursuant to 37 C.F.R. §1.17(a)**

[<input type="checkbox"/>]	Response filed within first month after due date – add	\$ 110.00 +	N/A
[<input type="checkbox"/>]	Response filed within second month after due date – add	\$ 420.00 +	N/A
[<input type="checkbox"/>]	Response filed within third month after due date – add	\$ 950.00 +	N/A
[<input type="checkbox"/>]	Response filed within fourth month after due date – add	\$1480.00 +	N/A
Subtotal:			0.00

If one of the "small entity" boxes above is checked, enter half (1/2) of the Subtotal and subtract.

TOTAL FEES DUE **\$0.00**

III. Manner of Payment

[] Snell & Wilmer Check No. _____ in the amount of \$ _____.
[] Please charge Deposit Account No. 19-2814 in the amount of \$ _____.
A duplicate copy of this sheet is attached for this purpose.
[X] No additional fee is required.

This statement does NOT authorize charge of the issue fee. The Commissioner is hereby authorized to charge any other fee specifically authorized hereafter, or any **deficiency** in the fee(s) filed, or asserted to be filed, or which should have been filed herewith or concerning any paper filed hereafter, and which may be required under 37 C.F.R. §§1.16-1.18 (**deficiency only**) now or hereafter relative to this Application and the resulting Official document under 37 C.F.R. §1.20, or credit any overpayment to Account No. 19-2814 for **which purpose a duplicate copy of this sheet is attached**.

Respectfully submitted,

Date: 3/19/04

By: 
Daniel R. Pote, Reg. No. 43,011

Snell & Wilmer L.L.P.
One Arizona Center
400 East Van Buren
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By: [Signature]

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**IN THE UNITED STATES PATENT AND
TRADEMARK OFFICE**

RESPONSE

Applicant(s):	Marks	Atty. Docket No.:	36207.0100
Serial No.:	09/698,640	Examiner:	Fults, Richard C.
Filed:	October 27, 2000	Group Art Unit:	3628
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Mail Stop Non-Fee Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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GROUP 3600

Dear Commissioner:

In response to the Office Action mailed December 19, 2003, please consider the
Amendment and Remarks included herewith.

Claim List

1. (Currently amended) A computer-implemented method for an on-line auction of the type wherein one or more customers ~~bids on~~ may purchase a product supplied by one or more merchants, said method comprising the steps of:

acquiring, over a network, customer information from said one or more customers, said customer information including a Preferred Program Term selected from one or more Program Terms associated with said product;

automatically grouping said one or more customers into one or more pools in accordance with said selected Preferred Program Term;

receiving, over said network, bids from said one or more merchants in connection with the on-line auction of said product to provide said product to said one or more customers in at least one of said pools;

comparing said bids from said merchants to select a preferred bid from a preferred merchant;

notifying, over said network, said preferred merchant of said preferred bid.

2. (New) The method of claim 1, wherein said grouping step includes grouping said customers via characteristic pooling.

3. (New) The method of claim 1, wherein said grouping step includes grouping said customers via commitment pooling.

4. (New) The method of claim 1, wherein said merchants are grouped into ghost pools.

REMARKS

In the Office Action mailed December 19, 2003, the Examiner rejected pending claim 1. Claim 1 has been amended, and new claims 2-4 have been added. Claims 1-4 remain pending in the application (1 independent, 4 total). Reconsideration is respectfully requested in light of the following Remarks.

A. Claim Rejections - 35 U.S.C. § 112

Claim 1 stands rejected under Section 112, first paragraph, as failing to comply with the enablement requirement. Specifically, the Examiner states that there is no concrete and tangible result of the steps cited in the invention. This rejection is respectfully traversed. Nevertheless, in the interest of compact prosecution, claim 1 has been amended to more clearly indicate the concrete and tangible results of the claimed invention.

B. Claim Rejections - 35 U.S.C. § 101

The Examiner has also rejected claim 1 under Section 101 as being directed to nonstatutory subject matter. Specifically, as with the Section 112 rejection cited above, the Examiner states that there is no concrete and tangible result of the steps cited in the invention. While this rejection is also respectfully traversed, claim 1 has been amended to more clearly indicate the concrete and tangible results of the claimed invention.

C. Claim Rejections -- 35 U.S.C. § 103

Claim 1 stands rejected under Section 103(a) as being unpatentable over U.S. Patent No. 6,553,346 (the "Walker reference"). This rejection is respectfully traversed. Specifically, the Examiner states that:

It would have been obvious to one skilled in the art at the time of the invention to read Walker's CPO as a preferred program term from one buyer in one group who is soliciting bids from a plurality of bidders. Walker requires the collection of information about each buyer (customer), especially what they want to buy (Terms).

Applicant disagrees, and respectfully submits that no combination of the Walker reference and the prior art would include each and every element of the claims as amended.

Generally, the Walker reference discloses a system for handling conditional purchase offers (CPO) in the context of, for example, airline travel and the like. That is, one offer will be conditioned on acceptance of a related offer. This assists in managing excess demand and achieves other market efficiencies. Specifically, the Walker reference discloses the "deconstruction" of an overall package into component CPOs which are individually offered to sellers. A package CPO management system then determines whether one or more sellers are in a position to accept each of the individual components, after which the system may bind the buyer to purchase the entire package. See, e.g., Walker reference, column 3, lines 10-24.

The Walker reference does not disclose each and every element of the claims as amended. For example, the Walker reference does not disclose or suggest, either alone or in combination with the prior art, an *auction* system wherein bids from one or more merchants are received in connection with an on-line auction. The Walker reference merely discloses the step of offering the CPO to one or more merchants, then binding the buyer in response to an

acceptance by the merchant. See, e.g., the Walker reference, Fig. 12a, which shows a non-iterative (i.e., non-auction) process for accepting sellers (block 1255 in Fig. 12a).

Furthermore, the Walker reference does not disclose the step of grouping customers into one or more pools in accordance with a Preferred Program Term. The Walker reference categorizes or partitions CPOs, but does not pool, partition, or otherwise categorize the *customers* who actually intend to purchase the individual products. In no way can the partitioned CPOs be considered a partition of customers.

Indeed, the Walker reference simply does not disclose any form of Program Term or pooling process as disclosed and claimed in the present invention. The Examiner argues, in Paragraph 4 of the Office Action, that the various limitations of claim 1 may be found in "at least columns 1-24." However, Applicant respectfully submits that, to the extent that these columns cover nearly the entire patent document itself, it is difficult to determine which features of the Walker reference are supposed to correspond to the elements of claim 1. The Examiner suggests that the collection of data regarding "what [the customers] want to buy" corresponds to Program Terms. Applicant disagrees, and suggests that this basic customer information as to the desired product is clearly not a "Program Term" as that phrase is used in the present application - i.e., a predefined term, quality, incentive, or other such indicia associated with a product or service that is the subject of the auction.

Therefore, in accordance with the above, Applicant requests that the Section 103 rejection be withdrawn with respect to the claims as amended.

D. Conclusion

In view of the above remarks, Applicants respectfully submitted that the foregoing remarks fully address the Examiner's objections, and that all of the pending claims comply with 35 U.S.C. § 112, are patentable over the art of record, are directed at statutory subject matter, and are in condition for allowance.

A Notice of Allowance respecting all pending claims is earnestly solicited. Should the Examiner wish to discuss any of the above in greater detail, then the Examiner is invited to telephone the undersigned at the Examiner's convenience.

Respectfully submitted,

Date 3/17/04

By 
Daniel R. Pote
Reg. No. 43,011

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